

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1026 of 2014

M/s.Envee Enterprises,
a Partnership Firm
represented by the Managing Partner,
N.Mariaprakash
No.24, New No.39, Alagesan Road,
Vedachalam Nagar, Chengalpattu. ... Petitioner

National Bank of Agriculture and
Rural Development,
represented by its
Chief General Manager,
K.V.Raghavelu,
No.48, Mahatma Gandhi Road,
Nungambakkam, Chennai - 34. ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment of learned VII Additional Judge, City Civil Court, Chennai, passed in C.M.A.No.14 of 2010 on 03.12.2013 confirming the order of learned IV Assistant Judge, City Civil Court, Chennai, passed in I.A.No.17759 of 2009 in O.S.No.9238 of 2009 on 23.10.2009.

For Petitioner : Mr.V.Raghavachari

For Respondent : M/s.Rank Associates

ORDER

This revision arises against the judgment of learned VII Additional Judge, City Civil Court, Chennai, passed in C.M.A.No.14 of 2010 on 03.12.2013 confirming the order of learned IV Assistant Judge, City Civil Court, Chennai, passed in I.A.No.17759 of 2009 in O.S.No.9238 of 2009 on 23.10.2009.

2. This revision arises out of conduct not expected of a statutory body such as the respondent, National Bank of Agriculture and Rural Development. Petitioner/plaintiff, a developer of properties, had entered into an agreement towards purchase of property on 08.05.1984. Subsequently, a tripartite agreement was entered into between petitioner/plaintiff, respondent herein as also owners of property for developing an extent of 8 grounds and 1023 sq.ft. out of total extent of 10 grounds and 1750 sq.ft. On the owner of the property contending that she had agreed to sell only 8 grounds and 1023 sq.ft. and not the entire extent of 10 grounds and 1750 sq.ft., petitioner/plaintiff filed a suit in C.S.No.753 of 1990 before this Court seeking specific performance of the agreement for sale dated 08.05.1984. Respondent filed a suit in C.S.No.736 of

1999 against petitioner and owners of the property seeking similar relief in respect of an extent of 8 grounds and 1023 sq.ft. Respondent impleaded themselves also in C.S.No.753 of 1990. Both C.S.No.753 of 1990 and C.S.No.736 of 1999 ended in a compromise and thereunder petitioner became entitled to an extent of 1 ground and 1500 sq.ft. out of the total extent of 10 grounds 1750 sq.ft. The property allotted to petitioner fell at the North East Corner and abutted Cenatoph road. The owners of the property executed and registered a sale deed in favour of petitioner under sale deed dated 21.10.2003 registered as document No.1074 of 2003 on the file of District Registrar, Central Chennai. Petitioner has complained of respondent having damaged a compound wall and filed a suit in O.S.No.9238 of 2009 on the file of City Civil Court, Chennai, in respect of property which fell to its share under the compromise decree and covered by the sale deed in their favour, alleging interference with its peaceful possession and acts of disturbance by respondent. Petitioner sought relief of permanent injunction. Under orders in I.A.No.17759 of 2009 in O.S.No.9238 of 2009 dated 06.10.2009, petitioners were granted interim injunction, but after the respondent had filed a counter and after hearing both sides, interim injunction granted on 06.10.2009 was vacated under orders dated 23.10.2009. C.M.A.No.14 of 2010 challenging such order was dismissed by learned VII

Additional Judge, City Civil Court, Chennai, under orders dated 03.12.2013, giving rise to the present revision.

3. Heard learned counsel for petitioner and learned counsel for respondent.

4. Of the total extent of 10 grounds and 1750 sq.ft., an extent of 8 grounds and 1023 sq.ft. has been purchased by respondent. They are in possession thereof as also 33 residential flats put up thereon. While the suit property purchased by petitioner lies to the North East Corner of the original extent of 10 grounds and 1750 sq.ft. the remaining extent lies in the South West Corner and respondent had in W.P.No.549 of 2007 claimed to be in possession both of the extent purchased by petitioner i.e., suit property as also that lying to the South West Corner and sought a writ of mandamus forbearing respondents therein from in any manner altering or modifying the total land extent as per the planning permit No.1788/B/28A/C/86 dated 21.02.1986 issued by CMDA and their interfering with their continuous enjoyment. Petitioner contested such writ petition and this Court under orders dated 21.11.2007 found the plea of respondent of their being in exclusive possession of property

highly difficult to accept and further held as follows:

'12. Apart from that, what is all pleaded is the attempted interference. The petitioner has claimed that he is in possession of the property and any attempted interference would be in contravention of the plan originally placed by the respondents 3 and 4 and also approved by the sanctioning authority namely respondents 1 and 2. At this juncture, it is to be pointed out that once there is attempted interference of the alleged possession of the petitioner, it has got to be stated that the writ jurisdiction is not the forum to get the remedy, but the petitioner has to approach the proper forum for the alleged act. In a given case like, this, if there is any construction is attempted to be made and that too in part and parcel of the land, which is originally found in the plan placed, approved and sanctioned by the sanctioning authority, the petitioner can well place a complaint before the proper forum for necessary action in this regard. At this juncture, it is to be pointed out that it is only an apprehension and that the relief asked for is only anticipatory in nature. Under these circumstances, in this regard also, the relief of mandamus could not be granted. Therefore, the relief if and when necessity arise. Any observation made by this court, as recorded above, will not in any way prevail upon the authority, before whom the remedy is sought for. Accordingly, this writ petition is disposed of. No costs. Consequently, the connected MPs are closed.'

5. It is not in dispute that respondent sought to purchase the suit property from petitioner but the price could not be agreed upon. The suit property is vacant land. Possession of vacant land follows title. Courts below have failed to duly note the finding of this Court that the contention of respondent being in possession was highly difficult to accept.

6. Learned counsel for respondent submitted that the petitioner has, by informing the use of suit property for parking of cars by the occupants of the respondents flats and of usage thereof as a play ground by children, admitted to respondent being in possession of the property. Learned counsel contended that petitioner had avoided filing a suit for possession as its doing so would permit respondent to claim adverse possession. Learned counsel further submitted that there having been no order of injunction in favour of petitioner over a period of 7 years, it would be appropriate to dismiss the present revision and direct Court below to dispose of the suit. Learned counsel added that W.P.No.549 of 2007 had no bearing on the present action.

7. From the contention of learned counsel for respondent it is clear that respondent does not deny the offending acts complained of but seeks to justify

the same. Respondent's contention is of being in possession of the suit property, a contention which did not find favour with this Court. Respondent claims possession on claims of parking Cars in the premises and of children using the same as a play ground. Parking of Cars and removal thereof from time to time only can be seen as intermittent acts of trespass. Generally, none would object to use of an empty space as a play ground and such use can only be seen as permissive. The milk of human kindness would not allow one to deprive himself the joyful sight of children playing. It is unfortunate that a statutory body, which the respondent is, would go to such extent to latch on to property that is not its.

The Criminal Revision Case shall stand allowed. The judgment of learned VII Additional Judge, City Civil Court, Chennai, passed in C.M.A.No.14 of 2010 on 03.12.2013 confirming the order of learned IV Assistant Judge, City Civil Court, Chennai, passed in I.A.No.17759 of 2009 in O.S.No.9238 of 2009 on 23.10.2009, shall stand set aside. I.A.No.17759 of 2009 in O.S.No.9238 of 2009 on the file of City Civil Court, Chennai, shall stand allowed. There shall be an order of interim injunction restraining the respondent from in any manner interfering with the peaceful possession and enjoyment of the suit property by

C.T.SELVAM, J

gm

petitioner situated on the North East Corner of the property bearing Door Old No.19/1, New No.23, Cenotaph Road, Chennai 600 018 and R.S.No.3856/8 Block No.76, Mylapore, pending disposal of the main suit.

30.08.2016

Index:yes/no,
Internet:yes
gm

To

- 1.The VII Additional Judge,
City Civil Court,
Chennai.
- 2.The IV Assistant Judge,
City Civil Court,
Chennai.

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